
United States
Circuit Court of Appeals

For the Ninth Circuit

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MINA H. JOHNSON, SIGMUND BEEL and A.
G. BRODIE,

Appellants,

vs.

F. E. HORTON, FRANK HORTON, JR., R.
McCARTHY, A. F. PRICE, WEEPAH
HORTON GOLD MINES COMPANY, a
Corporation, IVEN T. JEFFRIES, O. U.
PRYCE and P. N. PETERSEN,

Appellees.

Transcript of Record

Upon Appeal from the United States District Court for
the District of Nevada.

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PAUL P. O'BRIEN,

CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS
OF RECORD.

MAURICE E. GIBSON, Esq., 1215 Crocker First
National Bank Building, San Francisco, Cali-
fornia,

For the Plaintiffs in Error,

THATCHER & WOODBURN, Reno, Nevada,
For the Defendants in Error. [1]*

In the District Court of the United States in and
for the District of Nevada.

No. G-223

In Equity

MINA H. JOHNSON, SIGMUND BEEL, and A.
G. BRODIE,

Plaintiffs,

vs.

F. E. HORTON, FRANK HORTON, JR., R. Mc-
CARTHY, A. F. PRICE, and WEEPAH
HORTON GOLD MINES COMPANY, a
corporation, organized and existing under the
laws of the State of Nevada,

Defendants.

AMENDED BILL OF COMPLAINT.

To the Judge of the District Court of the United
States for the District of Nevada:

Mina H. Johnson, Sigmund Beel, and A. G.
Brodie, plaintiffs herein, each of whom is a citizen

*Page numbering appearing at the foot of page of original certified
Transcript of Record.

of the State of California, said Mina H. Johnson and said Sigmund Beel residing in the City and County of San Francisco, in said State of California, and said A. G. Brodie residing in the County of Alameda, State of California, pursuant to leave of Court first had and obtained, bring this their amended bill of complaint against F. E. Horton, Frank Horton, Jr., R. McCarthy, and A. F. Price, defendants, who are citizens of the State of Nevada, each of whom resides in the County of Washoe, in said state and defendant Weepah Horton Gold Mines Company, a corporation, duly created and existing under the laws of the State of Nevada, and being a citizen of said state, having its principal place of business at Tonopah, in the County of Nye, in said state, and complain and say: [2]

1. The ground upon which the jurisdiction of this Court depends is diversity of citizenship between the parties hereto, and the amount in controversy herein exceeds \$3000.00, exclusive of interest and costs.

2. The plaintiff Mina H. Johnson is a citizen of the State of California and resides in the City and County of San Francisco, in said state.

3. The plaintiff Sigmund Beel is a citizen of the State of California and resides in the City and County of San Francisco, in said state.

4. The plaintiff A. G. Brodie is a citizen of the State of California and resides in the County of Alameda, in said state.

5. The defendant F. E. Horton is a citizen of the State of Nevada and resides in the County of Washoe, in said state.

6. The defendant Frank Horton, Jr., is a citizen of the State of Nevada and resides in the County of Washoe, in said state.

7. The defendant R. McCarthy is a citizen of the State of Nevada and resides in the County of Washoe, in said state.

8. The defendant A. F. Price is a citizen of the State of Nevada and resides in the County of Washoe, in said state.

9. The defendant Weepah Horton Gold Mines Company, a corporation, is a citizen of the State of Nevada, organized under the laws of said state, existing thereunder and having its principal place of business at Tonopah, Nye County, in said state, and owning valuable mining claims in the State of Nevada, whose value is in excess of \$3,000.00.

10. The matter in controversy herein, exceeds, [3] exclusive of interest and costs, the sum or value of \$3,000.00.

11. A true copy of the by-laws of defendant Weepah Horton Gold Mines Company, as said by-laws were adopted by the stockholders of said corporation on the 23rd day of January, 1929, immediately subsequent to its organization and as the same now exist, with the exception of a purported amendment to Section 4 of Art. 2 thereof, which

purported amendment will be hereinafter referred to, is appended hereto, marked "Exhibit A," and incorporated herein by reference with the same force and effect as if rewritten herein in full.

12. A true copy of the original articles of incorporation of defendant Weepah Horton Gold Mines Company, which have never been amended in any respect whatsoever, is appended hereto, marked "Exhibit B" and incorporated herein by reference with the same force and effect as if rewritten herein in full.

13. No meeting of the stockholders of said corporation, for the purpose of electing directors of said corporation, was held between on or about the 1st day of February, 1929, and the 21st day of March, 1932. For this reason plaintiff Mina H. Johnson, as the duly appointed executrix of the estate of I. H. Johnson, deceased, joined with plaintiff A. G. Brodie and other persons, all of whom are stockholders of record in defendant Weepah Horton Gold Mines Company, in calling a special meeting of the stockholders of said corporation noticed to be held on the 21st day of March, 1932, for the purpose of electing directors in said corporation for the ensuing year and until the election and qualification of their successors in office. A true copy of said call is appended hereto, marked "Exhibit C" and by reference made a part hereof as if rewritten herein in full. At all times [4] herein mentioned the total issued and outstanding capital stock of de-

fendant Weepah Horton Gold Mines Company is and was 1,168,300 shares and said call was signed by stockholders of record in said corporation holding and owning more than one-third of said outstanding stock.

14. At a meeting of the board of directors of said corporation held on the 22nd day of May, 1929, assessment No. 1 was levied on the issued and outstanding capital stock of said corporation.

At a meeting of the board of directors of said defendant corporation held on or about the 15th day of March, 1932, a resolution was adopted which, in substance, provided that so many shares of each parcel of outstanding stock as would be necessary, would be sold at public auction on the 18th day of April, 1932, at the hour of 10:00 o'clock A. M. of said day for the purpose of paying delinquent assessments thereunder and notice thereof has been duly sent to the stockholders of record of said corporation, and advertised as required by law.

At a meeting of the board of directors of said corporation held on the 15th day of March, 1932, which board consisted of defendant F. E. Horton, defendant Frank Horton, Jr., and defendant R. McCarthy, George C. Keough, and A. F. Price, a resolution was adopted, which, in substance, provided that said assessment No. 1 levied on the stock of defendant F. E. Horton in the amount of \$3657.50 should be paid by offsetting said amount against bills in the amount of \$4242.18 alleged to

have been paid by defendant F. E. Horton for and on account of said corporation.

15. That at a meeting of the board of directors of defendant corporation held on the 19th day of March, 1932, at [5] which all of said five directors were present and acting, to-wit: F. E. Horton, Frank Horton, Jr., R. McCarthy, George E. Keough, and A. F. Price, a resolution was adopted by said directors purporting to change and amend Section 4 of Art. 2 of the by-laws of said corporation by adding the following thereto:

“No stockholder shall be entitled to vote any shares of stock on which share or shares of stock the or any assessment thereon be due, unpaid, or delinquent, and no shares shall be voted at any meeting of stockholders for the election of directors unless all calls and assessments thereon or against said stock shall be paid on the date and at and prior to the meeting of the shareholders.

“At all meetings of stockholders, in order to constitute a quorum, only shareholders who have paid all calls and assessments theretofore levied, shall be considered as shareholders of the company.”

16. From the time of the sending out said call referred to in paragraph thirteen (13) herein and to and including Sunday, March 20, 1932, defendant F. E. Horton conducted a vigorous campaign to secure proxies authorizing him to vote at said stock-

holders' meeting the shares of the capital stock of said corporation owned and held by the various stockholders of said corporation; and in said campaign proxies were sought and secured by him from stockholders in said corporation who had not yet paid their said assessments, as well as from stockholders who had paid their assessments; and efforts were made by said defendant F. E. Horton up to as late as Sunday, March 20, 1932, to secure proxies from persons holding stock in said corporation who had not paid their said assessment thereon.

17. The special stockholders' meeting for the purpose of electing directors of defendant corporation was duly held in accordance with the call and notice hereinbefore re- [6] ferred to at 10:00 o'clock A. M. on the 21st day of March, 1932, at the office of the corporation in Room 13 of the United Nevada Bank Bldg., in Reno, Nevada. There were present at said meeting in person and by proxy 1,136,140 shares of the capital stock of said corporation out of a total of 1,168,300 shares of the capital stock of said corporation issued and outstanding. The proxy committee appointed by the chair consisting of Wm. McKnight, Wm. Forman, Jr., and M. E. Gibson, made a written report to the chair as to the number of shares of stock present at said meeting in person and by proxy, a true copy of which report is appended hereto, marked "Exhibit D" and by reference incorporated herein as if rewritten herein in full.

18. The proxy committee's report having been accepted by the chair, the meeting proceeded in the election of five directors of the corporation to serve for the ensuing year and until the election and qualification of their successors in office. F. E. Horton, Frank Horton, Jr., R. McCarthy, Mina H. Johnson, A. G. Brodie, and Sigmund Beel were duly nominated. The meeting then proceeded in the election of directors by written ballot under the supervision of said Wm. McKnight and said Wm. Forman, Jr., who had been appointed inspectors of election by defendant H. E. Horton, chairman of said meeting. In said election plaintiff Mina H. Johnson, the holder of proxies at said meeting representing 85,500 shares of the capital stock of said corporation and representing in person 167,000 shares of the capital stock of said corporation, cumulated said shares and voted $420,833\frac{1}{3}$ shares for each of three of said nominees, to-wit: Mina H. Johnson, A. G. Brodie, and Sigmund Beel; and M. E. Gibson, the holder of proxies at said meeting representing 360,550 shares [7] of the capital stock of said corporation, cumulated said shares and voted $600,916\frac{2}{3}$ shares for each of three of said nominees, to-wit: Mina H. Johnson, A. G. Brodie, and Sigmund Beel. The polls being closed, said Wm. McKnight and Wm. Forman, Jr., as said inspectors of election, proceeded to canvass and examine the votes cast and thereupon made their report in writing to the chairman, a true copy of which is an-

nexed hereto, marked "Exhibit E" and by reference incorporated herein as if rewritten herein in full. That upon request being made by said M. E. Gibson of said inspectors as to why the votes cast by Mina H. Johnson and M. E. Gibson for Mina H. Johnson, A. G. Brodie, and Sigmund Beel, as aforesaid, had been disregarded and not counted by said inspectors, with the exception of $142,083\frac{1}{3}$ votes for each of said individuals, as shown on said inspectors' report, said inspectors stated in substance that they had not counted and had eliminated from the poll all votes cast in said election representing outstanding stock of record in said corporation on which said assessment No. 1 had not yet been paid. Whereupon the chairman F. E. Horton declared that defendants F. E. Horton, Frank Horton, Jr., and R. McCarthy had been elected directors in said corporation to serve as such until the election and qualification of their successors in office and that owing to the report of the inspectors showing a tie vote between plaintiffs Mina H. Johnson, A. G. Brodie, and Sigmund Beel the remaining two places in the directorate were to be considered as vacant. Whereupon defendant H. E. Horton announced that the meeting was adjourned. M. E. Gibson then stated to the meeting, as it was adjourning, that plaintiffs Mina H. Johnson, A. G. Brodie, and Sigmund Beel, having each received 1,021,750 votes in said election, said plaintiffs [8] Mina H. Johnson, A. G. Brodie, and Sigmund Beel were duly elected

directors of said corporation and that the organization meeting of the board of directors of said corporation would be held in said room immediately after the adjournment of said stockholders' meeting in conformity with Article 5, Section 1 of the by-laws of said corporation; whereupon all of said defendants left said meeting room and plaintiffs proceeded to organize as the board of directors of said defendant corporation.

19. At said organization meeting of said board of directors held immediately after said stockholders' meeting, as aforesaid, the following persons were present:

Plaintiffs Mina H. Johnson, A. G. Brodie, and Sigmund Beel. At said organization meeting the following officers of defendant corporation were duly elected and chosen by plaintiffs, acting as directors in said corporation, in accordance with Article 5, Section 1 of the by-laws of said corporation, to-wit:

President.....Mina H. Johnson

Vice-president.....Sigmund Beel

Secretary-treasurer.....A. G. Brodie

to serve as such officers until the election and qualification of their successors in office.

20. Defendants F. E. Horton, Frank Horton, Jr., and R. McCarthy, are purporting to act as the board of directors of defendant corporation and F. E. Horton, A. F. Price, and R. McCarthy are purporting to act as the president, vice-president, and

secretary-treasurer of said defendant corporation, respectively. Defendants F. E. Horton, A. F. Price, and R. McCarthy as the purported president, vice-president, and secretary-treasurer of defendant corporation are in possession of the books, records, and properties of defendant corporation and have refused and still [9] refuse to deliver the same to plaintiffs herein, although demand has been made therefor.

Wherefore, plaintiffs pray for the following relief:

(a) That pending this suit a receiver be appointed to take charge of all the books, accounts, property, and assets of defendant corporation with the usual additional powers of a receiver in like cases.

(b) That an injunction be issued restraining defendants F. E. Horton, Frank Horton, Jr., R. McCarthy, and A. F. Price from exercising or purporting to exercise the rights and functions of directors and/or officers in defendant corporation as aforesaid.

(c) That said defendants and their agents, servants, and attorneys be directed forthwith to deliver to said receiver, or to the plaintiffs if a receiver be not appointed, all the books, assets, and property of said defendant corporation.

(d) That the pretended election of defendants F. E. Horton, Frank Horton, Jr., and R. McCarthy

as directors in defendant corporation, as aforesaid, be declared illegal and void.

(e) That any pretended election and/or purported office holding of F. E. Horton as president, A. F. Price as vice-president, and R. McCarthy as secretary-treasurer of said corporation be declared illegal and void.

(f) That said purported amendment of the by-laws of defendant corporation purporting to disqualify for voting purposes stock issued by defendant corporation on which assessments are unpaid, as alleged in paragraph 15 hereof, be declared illegal and void. [10]

(g) That plaintiffs Mina H. Johnson, Sigmund Beel, and A. G. Brodie, be declared and adjudicated legally elected directors of defendant corporation to serve as such until the next annual meeting of the stockholders of defendant corporation, as provided by the by-laws of defendant corporation.

(h) That plaintiffs Mina H. Johnson, Sigmund Beel, and A. G. Brodie, be declared and adjudicated the legally elected and acting president, vice-president, and secretary-treasurer, respectively, of defendant corporation to serve as such officers until the election and qualification of their successors in office as provided by the by-laws of defendant corporation.

(i) Such further relief as to this Court seems fit.

Dated, May 23rd, 1932.

M. E. GIBSON,
Attorney for Plaintiffs,
No. 1 Montgomery Street,
San Francisco, California. [11]

United States of America,
State of California,
City and County of San Francisco.—ss.

Mina H. Johnson, being duly sworn, deposes and says:

That she is one of the plaintiffs in the above entitled action; that she has read said amended bill of complaint and knows the contents thereof; that said amended bill of complaint is true of her own knowledge, except as to the matters therein alleged on information and belief and as to those matters she believes it to be true. That she makes this verification on behalf of her co-plaintiffs as well as for herself.

MINA H. JOHNSON,
Affiant.

Subscribed and sworn to before me this 23rd day of May, 1932.

[Seal] LEONTINE E. DENSON,
Notary Public in and for the City and County
of San Francisco, State of California.

My commission expires December 3, 1935. [12]

"EXHIBIT A."
BY-LAWS OF
WEEPAH HORTON GOLD MINES
COMPANY

Article I.

Offices.

Section 1. The registered office shall be in the City of Tonopah, Nevada. The agent in charge of said office, upon whom process against the company may be served, is H. Howard Gray.

Section 2. The company may also have an office in the City of Reno, State of Nevada, and also have offices in such other places as the board of directors may appoint.

Article II.

Meeting of Stockholders.

Section 1. The annual meeting of the stockholders of this corporation in the City of Reno, State of Nevada, on the 1st Tuesday in February in each year, at 3:00 P. M. for the election of directors and such other business as may properly come before the meeting. Notice of the time, place and object of such meeting shall be given by publication thereof in a newspaper, published in the county where the election is held, at least once each week for two consecutive weeks immediately preceding such meeting, and by mailing at least fifteen days previous to such meeting, postage prepaid, a copy of such

notice addressed to each stockholder, at his residence or place of business as the same shall appear on the books of the corporation. No business other than that stated in such notice, shall be transacted at such meeting without the unanimous consent of all stockholders present thereat in person or by proxy.

Sec. 2. Special meetings of the stockholders shall be held at the office of the company in Reno, Nevada, and may be called at any time by the president, or by a majority of the directors, or by a call signed by stockholders holding one-third of the voting stock of the company. Notice of every special meeting, stating the time, place and object thereof, shall be given by mailing, postage prepaid, at least ten days before such meeting, a copy of such notice, addressed to each stockholder at his post office address as the same appears on the books of the company. The time of mailing all notices mentioned in these by-laws shall be deemed to be the time of giving of such notice.

Sec. 3. At all the meetings of the stockholders there shall be present, either in person or by proxy, stockholders owning a majority of the outstanding capital stock of the corporation, in order to constitute a quorum, except where otherwise provided by statute or the certificate of incorporation.

Sec. 4. At all meetings of stockholders only such persons shall be entitled to vote, in person or by proxy, who shall appear as stockholders on the

transfer books of the corporation for twenty (20) days immediately preceding such meeting. At any regular or special meeting each shareholder shall be entitled to one vote for every share of stock held in his name.

In all elections for directors each stockholder may accumulate his shares, and give one candidate as many votes as the number of directors multiplied by the number of his shares of stock shall equal, or distribute them on the same principal among as many candidates as he shall think fit.

Sec. 5. At all elections of directors the polls shall be opened and closed, the proxies shall be received and taken in charge, all questions touching the qualifications of voters and the validity of the [13] proxies, and the acceptance or rejection of the votes shall be decided and all ballots shall be received and counted by two inspectors. Such inspectors shall be appointed by the presiding officer of such meeting, shall be sworn faithfully to perform their duties, and shall, in writing, certify the returns.

Sec. 6. At the annual meeting of stockholders the following shall be the order of business:

1. Calling of Roll.
2. Proof of Notice of Meeting.
3. Report of President.
4. Report of Treasurer.
5. Report of Secretary.
6. Report of committees.

7. Appointment of Inspectors of Election of directors.

8. Election of directors.

9. Miscellaneous.

Sec. 7. At all meetings of stockholders, all questions, except the question of an amendment to by-laws and the election of directors, and all such other questions, the manner of deciding which is especially regulated by statute, shall be determined by a majority vote of the stockholders present, in person or by proxy; provided, however, that any qualified voter may demand a stock vote, and in that case such vote shall immediately be taken and each stockholder present in person or by proxy, shall be entitled to one vote for each share of stock owned by him as provided in Section 4. All voting shall be *viva voce*, except that a stock vote shall be by ballot, each of which shall state the name of the stockholder voting and the number of shares owned by him, and in addition, if such ballot be cast by proxy, it shall also state the name of such proxy.

Sec. 8. At any annual meeting, if a majority of the stock shall not be represented, the stockholders present shall have power to adjourn from day to day, without notice, until a majority be represented, not exceeding ten such adjournments, or to adjourn to a day certain, and notice of the meeting of the adjourned day shall be given by depositing the same in the post office addressed to each stockholder at least five days before such adjourned

meeting, exclusive of the day of mailing; but if a majority of the stock be present in person or by proxy, they shall have power from time to time to adjourn the annual meeting to any subsequent day or days, and no notice of the adjourned meeting need be given. Special stockholders' meetings may be continued in like manner.

Sec. 9. If any meeting provided for in this code of by-laws shall fall upon a legal holiday, the same shall be held upon the next succeeding business day at the same hour and place.

Article III.

Directors.

Section 1. The directors of this corporation shall be elected by ballot, for the term of one year, at the annual meeting of stockholders, except as hereinafter provided for filling vacancies. The directors shall be chosen by a plurality vote of the stockholders, voting either in person or by proxy at each annual election. The directors shall each hold at least one share of stock.

Sec. 2. Vacancies in the board of directors occurring during the year, shall be filled for the unexpired term by a majority vote of the remaining directors at any special meeting called for that purpose or any regular meeting of the board.

Sec. 3. In case the entire board of directors shall die or resign, any stockholder may call a special meeting of stockholders in the same manner that

the president may call such meeting, and the directors for the unexpired term may be elected at such meeting in the manner provided for their election at annual meetings. [14]

Sec. 4. The board of directors may adopt such rules and regulations for the conduct of their meetings and management of the affairs of the corporation as they deem proper, not inconsistent with the laws of the state of Nevada or these by-laws.

Sec. 5. The board of directors shall meet on 1st Monday of every month at the office in Reno, Nevada, or whenever called together by the president upon notice given to each director. On the written request of any director, the secretary shall call a special meeting of the board. At such meeting a majority shall constitute a quorum for the transaction of business.

Sec. 6. All directors' meetings shall be called upon notice in writing, signed by the secretary, and served as follows, viz.: Personally upon the director, or by mailing or leaving such written notice at the last known place of business of the director, personal service shall be made at least one day prior to the date of the meeting; the alternative method of service shall be at least five days before the date of the meeting. Any director may waive notice of such meetings. If all directors are present, meeting may be held without notice.

Sec. 7. The board of directors and the executive committee shall, except as otherwise provided by

law, have power to act in the following manner: a resolution in writing, signed by all the members of the board of directors or executive committee, shall be deemed to be action by such board or executive committee, as the case may be, to the effect therein expressed, with the same force and effect as if the same had been duly passed by the same vote at a duly convened meeting, and it shall be the duty of the secretary of the company to record such resolution in the minute book of the company under its proper date.

Sec. 8. Any director or directors may be removed at the pleasure of a majority of the issued outstanding stock. Any officer or officers may be removed at the pleasure of a majority of the directors. A majority of the board of directors shall have power to appoint and remove at pleasure the superintendent, manager, general manager, and any and all other subordinate officers, employees, agents and servants of the company.

Article IV.

Executive Committee and Other Committees.

Section 1. The board of directors may appoint three of their own number to act as an executive committee to serve during the life of the board that appointed it, or until further action of the board.

Sec. 2. The executive committee shall have entire control and supervision of all the property and business affairs of the corporation, and shall have

and exercise all the powers and privileges which are possessed and exercised by the board of directors.

Sec. 3. All actions of the executive committee shall be reported to the board at its meeting next succeeding, and such action shall be subject to revision or alteration by the board; provided, that no right of third parties shall be affected by such revision or alteration.

Sec. 4. From time to time the board may appoint any other committee or committees for any purpose or purposes, who shall have such powers as shall be specified in the resolution of appointment.

Article V.

Officers.

Section 1. The board of directors immediately after the annual meeting shall choose one of their number by a majority vote to be president, and it shall appoint a vice-president, second vice-president, [15] secretary, treasurer and assistant treasurer, and such other subordinate officers as it shall deem necessary. Each of such officers shall serve for the term of one year, or until the next annual election, or until a successor is duly and regularly elected. Vacancies occurring among the officers may be filled by the board of directors for the unexpired term.

Sec. 2. The president shall preside at all meetings of the board of directors, and shall act as chairman at, and call to order, all meetings of stockholders. He shall sign all certificates of stock.

He shall submit a complete report of the operations and condition of the company for the year to the directors at their regular meeting in January and to the stockholders at their regular meeting in February of each year, and from time to time shall report to the directors all matters within his knowledge which the interests of the company may require to be brought to their notice; he shall be an ex-officio member of all standing committees, and shall have the general powers of supervision and management usually vested in the office of president of a corporation, consistent with these by-laws.

Sec. 3. The vice-president shall in the absence or incapacity of the president, perform the duties of that office, so long as such absence or incapacity continues, or until the board shall otherwise determine.

Sec. 4. The treasurer shall have the custody of all the funds and securities of the corporation, and deposit the same in the name of the corporation in such bank or banks as the directors may select; he shall sign all checks, drafts, notes and orders for the payment of money, and he shall pay out and dispose of the same under the direction of the president. He shall at all reasonable times exhibit his books and accounts to any director or stockholder of the company upon application at the office of the company during business hours. He shall give such bond for the faithful performance of his duties as the board of directors may require. Any rep-

utable bank may act as a treasurer or as depository or both.

Sec. 5. The secretary shall keep the minutes and proceedings of the board of directors and the minutes of the meetings of stockholders; he shall attend to the giving and serving of all notices of the company; he shall affix the seal of the company to all certificates of stock; he shall have charge of the certificate book and such other books and papers as the board may direct; he shall attend to such correspondence as may be assigned to him, and shall perform all the duties incidental to his office. He shall also keep a stock book containing the names, alphabetically arranged, of all persons who are stockholders of the corporation, showing their places of residence, the number of shares held by them respectively, the time when they respectively became owners thereof, and such book shall be open for the inspection of stockholders during the usual business hours at the office of the company. He shall sign all certificates of stock signed by the president. He shall make all reports required by the acts of Congress, by the laws of the state or states of..... and it shall be his duty to keep himself posted as to the requirements of the law in that behalf; he shall also advise the treasurer as to when any taxes are legally due to be paid by the company.

Sec. 6. The counsel of the company shall prepare all such contracts and agreements required in

the business of the company as may be referred to him by its officials; he shall inspect and pass upon all such instruments as may be presented to the company and be of sufficient importance to justify such examination. He shall also advise with the officers of the company in such legal matters pertaining to the affairs of the company as may require his consideration. [16]

Sec. 7. In the absence of any officer, the board of directors may delegate his powers and duties to any other officer, or to any director for the time being.

Article VI.

Capital Stock.

Section 1. Certificates of stock shall be numbered and registered in the order in which they are issued, and shall be signed by the president and secretary, and the seal of the corporation shall be affixed thereto. All certificates shall be bound in a book, and be issued in consecutive order therefrom, and in the margin thereof shall be entered the name and address of the person owning the shares therein represented, the number of shares and the date of issuing thereof. All certificates exchanged or returned to the corporation shall be marked cancelled, with the date of cancellation, by the secretary, and shall be immediately pasted in the certificate book opposite the memorandum of its issue. The vice-president and assistant secretary may also sign certificates of stock.

Sec. 2. Transfers of such shares shall only be made upon the books of the corporation by the holder in person or by power of attorney duly executed and acknowledged and filed with the secretary of the corporation, and on the surrender of the certificate or certificates of such shares.

Sec. 3. The board may appoint a transfer agent and a register of transfers, and may require all certificates to bear the signature of either or both.

Article VII.

Dividends and Fiscal Year.

Section 1. Dividends shall be declared and paid out of the surplus profits of the corporation as often and at such times as the board may determine. No dividends shall be declared or paid that tend to curtail the effective operation of the business.

Sec. 2. The fiscal year of the company shall begin the 1st day of January and terminate on the 31st day of December, in each year.

Article VIII.

Seal.

Section 1. The seal of the corporation shall be in the form of a circle, and shall bear the name of the corporation, the year of its incorporation, and the name of the State of its domicile.

Article IX.

Amendments.

Section 1. The board of directors shall have power to amend or repeal the by-laws of the company by a vote of a majority of all the directors at any regular or special meeting of the board; provided, that notice of intention to make, amend or repeal the by-laws in whole or in part at such meeting shall have been previously given to each member of the board; or without any such notice by a vote of two-thirds of all the directors.

Sec. 2. All the by-laws shall be subject to amendment, alteration and repeal at any annual meeting of stockholders or at any special meeting called for that purpose. [17]

 EXHIBIT B.

ARTICLES OF INCORPORATION
of
WEEPAH HORTON GOLD MINES COMPANY

KNOW ALL MEN BY THESE PRESENTS: That the undersigned have this day associated ourselves for the purpose of forming a corporation for mining and other purposes hereinafter set forth, under the laws of the State of Nevada, and hereby certify:

I.

The name of this corporation shall be WEEPAH HORTON GOLD MINES COMPANY.

II.

The location of said corporation's principal office and place of business in the State of Nevada shall be at the office of the Electric Gold Mines Company situated on the east side of Main Street opposite the Elks Club Building, in Tonopah, Nye County, Nevada. The company may also have on or more offices outside of the State of Nevada where the books of the company may be kept and meetings of the directors and stockholders may be held, as may be determined by the Board of Directors.

III.

The nature of the business and the objects and purposes for which this corporation is formed are to do any and all things herein set forth, to the same extent and as fully as natural persons might or could do, and in any part of the world, as principal, agent, contractor, trustee, or otherwise, and either alone, or in company with others namely:

Locating, working, developing, leasing, buying, selling and otherwise dealing in mines, mining locations, mining claims, mining rights, mineral deposits, millsites, tunnel sites, tunnel claims, water rights, mining plants, machinery, or works used in connection therewith; also to engage in and [18] carry on the business of crushing, milling, smelting, refining, and preparing for market, gold, silver, lead, tin, copper, zinc and other ore, coal, petroleum, oil, minerals and mineral substances of all kinds,

and to carry on any other reducing, smelting or metallurgical operations, which may seem conducive to any of this corporation's objects, purposes or business, and also to engage in and carry on the business of buying, selling, manufacturing and dealing in minerals, ores, metals, mining plants, machinery, implements, conveniences, provisions and things used in connection with the business of this corporation, or required by the workmen and others employed by this corporation.

To acquire by purchase, or otherwise, own, hold, develop, buy, sell, convey, lease, mortgage or encumber lands, real estate, water or other property, personal or mixed.

To survey, subdivide, plat, improve, and develop lands for purposes of sale or otherwise, and to do and perform all things needful and lawful for the development and improvement of the same for residence, trade and business.

To purchase, construct, lease, operate and maintain electric lighting and power plants, buildings, constructions, machinery, appliances, equipments, fixtures, easements and appurtenances.

To purchase, construct, lease, operate and maintain telephone lines and lines for electric light and power purposes.

To furnish electricity for power and lighting purposes and all appliances incident or necessary thereto.

To purchase, construct, lease, operate and maintain tramways, rights of way, easements and appurtenances.

To construct, purchase, develop, or otherwise acquire, maintain, repair and operate water and water works, sewer plants and drainage system, and to sell, lease, or rent water and water rights and privileges. [19]

To buy, sell, and generally trade in, store, carry and transport all kinds of goods, wares, merchandise, provisions and supplies.

IN FURTHERANCE AND NOT IN LIMITATION of the general powers conferred by the laws of the State of Nevada, and of the objects and purposes herein set forth, it is expressly provided that this corporation shall also have the following powers, that is to say:

1. To acquire the good will, rights, property and franchises, and to undertake the whole or any part of the assets and liabilities of any person, firm, association or corporation, and to pay for the same in cash, stock or bonds of this corporation, or otherwise to hold, or in any lawful manner to dispose of the whole or any part of the property so purchased, to conduct in any lawful manner the whole or any part of the business so acquired and to exercise all the powers necessary or convenient in and about the conduct and management of such business.

2. To hold, purchase, accept as security for debts of the corporation, or otherwise acquire, sell,

guarantee, underwrite, assign, transfer, mortgage, pledge or otherwise dispose of shares of the capital stock of this corporation and stocks and bonds or other evidences of indebtedness created by any other corporation or corporations of this state, or any other state, or territory, country or government and while the holder of such stock, to exercise all the rights and privileges of ownership, including the right to vote thereon, to the same extent as natural persons might or could do.

3. To make and enter into and perform contracts of every sort and kind for any lawful purpose with any individual, firm, association, corporation, private, public or body politic, and with the Government of the United States or any state, territory or colony thereof, and to draw, make, accept, indorse, discount, execute and issue promissory notes, bills of exchange, warrants, bonds, debentures and other negotiable [20] or transferable instruments, so far as may be permitted by the laws of the State of Nevada.

4. To apply for, or in any manner acquire, and to hold, own, use and operate, or sell, or in any manner dispose of, and to grant license or other rights, inventions, improvements and precesses used in connection therewith or secured under letters patent or copyrights of the United States, or other countries; and to make, operate or develop the same, and to carry on any business, manufacturing or otherwise, which may directly or indirectly effectuate these objects, or any of them.

5. To purchase, hold, cancel and re-issue the shares of its capital stock.

6. To conduct its business or any part thereof in any and all parts of the world, and to have one or more offices out of the State of Nevada, and to purchase or otherwise acquire, hold, mortgage, or otherwise lien and encumber, and sell, convey and transfer real and personal property of every kind and nature, both within and without the State of Nevada, and to issue its bonds in pursuance thereof.

7. In general to carry on any other business within or without the State of Nevada, in connection therewith, whether manufacturing, merchandising or otherwise, not forbidden by the laws of the State of Nevada and with all the powers conferred by the said laws upon said corporations.

8. To become and be the trustee of any person, firm, association, or corporation, and to exercise all the powers and privileges of a trustee, in accordance with the terms and conditions of the trust under and by which the same is committed to it.

9. It is the intention that the objects, purposes and powers specified in this third paragraph shall, except where otherwise expressed in said paragraph, be nowise limited or restricted by reference to, or inference from the terms of any other clause or paragraph in this certificate of incorpor- [21] ation, but that the objects, purposes and powers specified in each of the clauses of this certificate of

incorporation shall be regarded as independent objects, purposes and powers.

IV.

(a.) The maximum number of shares with nominal or par value, that this corporation shall be authorized to have outstanding at any time is Two Million Five Hundred Thousand shares.

(b.) The maximum number of shares without nominal or par value that this corporation shall be authorized to have outstanding at any time is no shares.

(c.) All of said stock shall be common stock.

(d.) The nominal or par value of the shares other than shares which it is stated are to have no nominal or par value shall be ten cents (10¢) per share.

V.

The amount of capital with which this corporation will begin business will be \$500.00.

VI.

(a.) The members of the governing board of this corporation shall be styled directors and the number of such directors shall be five.

(b.) The names and postoffice addresses of the first board of directors are as follows:

Name	Residence	Postoffice Address
F. E. Horton	Tonopah, Nevada	Tonopah, Nevada
Iven Jeffries	do	do
H. Perry	do	do
Wm. Forman	do	do
Alfred Boyle	do	do

VII.

Whenever the amount of the subscription price or par value of the capital stock of this corporation has been paid in, said stock shall be subject to assessment to pay debts of [22] the corporation and ~~no paid up stock and no stock issued as fully paid up shall ever be assessable or assessed by this corporation~~ carry on development work on its property.

VIII.

The name and post office address of each subscriber of these articles of incorporation, and the number of shares of stock which each agrees to take is as follows:

Name	Residence	Postoffice Address	Shares
Iven Jeffries	Tonopah, Nevada	Tonopah, Nevada	498
Alfred Boyle	do	do	1
H. Perry	do	do	1

IX.

This corporation is to have a perpetual existence.

X.

(a.) The Board of Directors shall have the power and authority to make and alter or amend the by-laws, to fix the amount, in cash or otherwise, to be reserved as working capital, and to authorize and cause to be executed mortgages and liens upon the property and franchises of this corporation.

(b.) The Board of Directors shall have power and authority with consent in writing, and pursuant to the vote of a majority of the capital stock issued, and outstanding, to sell, assign, transfer, or otherwise dispose of the whole property and business of this corporation, but not otherwise.

(c.) The Board of Directors shall, from time to time, determine whether, and to what extent, and at what times and places and under what conditions and regulations the accounts and books of this corporation, or any of them, shall be opened to the inspection of the stockholders; and no stockholders shall have the right to inspect any account, or book, or document, of this corporation, except as conferred by the Statutes of the State of Nevada, or authorized by the directors, or by resolution of the stockholders.

(d.) The stockholders and directors shall have the [23] power to hold their meetings, and keep the books, documents and papers of this corporation outside of the State of Nevada, and at such places as may from time to time be designated by the

by-laws or by resolution of the stockholders or directors, except as otherwise required by the laws of the State of Nevada.

(e.) No stockholder in this corporation shall have a preference over any one not a stockholder to purchase any new stock in this corporation, sold for cash, unless the Board of Directors, by a majority vote before the sale of said stock, shall deem it expedient, that the stockholders have such preference.

(f.) At all elections of directors of this corporation, each holder of stock possessing voting power, shall be entitled to as many votes as shall equal the number of his shares of stock multiplied by the number of directors to be elected and he may cast all of such votes for a single director, or may distribute them among the number to be voted for or any two or more of them as he may see fit.

IN WITNESS WHEREOF, the said incorporators have hereto subscribed their names this 26 day of March A. D. 1927.

IVEN JEFFRIES,
H. PERRY,
ALFRED BOYLE.

State of Nevada,
County of Nye.—ss.

Before me, Wm. Forman, a Notary Public, in and for said County, personally appeared Iven Jeffries, Alfred Boyle, H. Perry, known to me to

be the persons named in and who executed the foregoing Articles of Incorporation, and acknowledged to me that they executed the same, freely and voluntarily, and for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and Notarial Seal this 26th day of March, A. D. 1927.

[Seal]

WM. FORMAN,
Notary Public. [24]

“EXHIBIT C”

NOTICE OF SPECIAL MEETING OF THE
STOCKHOLDERS OF WEEPAAH HORTON
GOLD MINES CO., a corporation, FOR THE
ELECTION OF DIRECTORS.

Reno, Nevada,
March 9th, 1932.

To the stockholders of Weepah Horton Gold Mines
Co., a corporation:

The undersigned, stockholders of Weepah Horton Gold Mines Co., a corporation, organized under the laws of the State of Nevada, holding more than one-third of the voting stock of said corporation, and each holding the number of shares of said stock set after his name, respectively, hereby call a special meeting of the stockholders of said Weepah Horton Gold Mines Co., for the purpose of electing di-

rectors of said corporation for the ensuing year and until the election and qualification of their successors in office. Said meeting of said stockholders is called pursuant to the provisions of article II Section 2 of the by-laws of said corporation and the laws of the State of Nevada; and said meeting of said stockholders will be held on the 21st day of March, 1932, at the hour of 10:00 o'clock A. M. of said day at the office of said corporation in Reno, Nevada, in Room 13 United Nevada Bank Bldg., in said city, for the election of said directors, as aforesaid, and for the transaction of such other business as may properly come before said meeting.

Yours very truly,

Name of Stockholder in Said Weepah Horton Gold Mines Co., a corp.	Number of Said Shares Held
F. W. Baude	166 800
A. G. Brodie	10 000
I. E. Johnson by Mina H. Johnson Executrix—Mina H. Johnson as Executrix of the estate of I. H. Johnson, deceased	167 000
J. J. Davis	110 000
Herbert L. Davis	160 000

“EXHIBIT D”

Mr. A. F. Price, Vice President,
Weepah Horton Gold Mines Company,
Reno, Nevada.

Dear Sir:—

We, the undersigned, this morning appointed by you as a committee to examine and report on the number of shares of stock represented in person or by proxy at the meeting of your stockholders held this date, beg leave to report as follows:

The following stockholders WHO HAVE PAID THE ASSESSMENT on their stock are present in person:

Name	Shares
F. E. Horton	336,100
A. F. Price	500
R. McCarty	100

Total..... 336,700

The following stockholders WHO HAVE PAID THE ASSESSMENT on their stock have given proxies to M. E. Gibson to vote their stock:

Name	Shares
Mrs. L. M. Bartel	2,000
Burton Baxter	1,000
Thos. C. Brandenbrug	2,000
Curtis I. Brower	3,000
Frank C. Campbell	2,500
Alice S. Dailey	2,000
J. J. Davis	20,000
Herbert L. Davis	10,000
Emma May Davis	20,000
Irma B. Downing	1,000
T. H. Dudley	1,000
F. W. Miers	500
M. S. Miers	500
F. R. Shumack	2,000
H. P. Tracy	1,250
Myrtle S. Vieregg	5,000
Martha H. Simpson	2,000
Total.....	75,750

The following stockholders WHO HAVE PAID THE ASSESSMENT on their stock have given proxies to Mina H. Johnson to vote their stock:

Name	Shares
James A. Clark	1,000
Chas. L. Conte	3,000
D. Costa	3,000
Edw. P. Spengler	2,500
<hr/>	
Total.....	9,500
	[26]

The following stockholders WHO HAVE PAID THE ASSESSMENT on their stock have given proxies to F. E. Horton to vote their stock:

Name	Shares
A. C. Agnew	2,000
Gertrude Allender	350
Anna C. Bahntge	70
D. Bardas	200
Ross M. Brasington	65
C. L. Brink	500
Ruth A. Brink	500
D. M. Brereton	2,500
Mrs. Warren Bybee	100
J. C. Carner	1,000
R. Cawley	1,500
L. H. Cook	100
LeRoy B. Cramer	65
C. L. Crellin	10,000
Fred Crosby	100

Name	Shares
Chas. W. Davis	500
Frank Dobson	200
F. W. Elkins	100
Wilson F. Ewing	500
Edward E. Frank	2,000
Mira Dewey Caroutte	500
J. J. or Veda L. Haskin	8,000
Emma L. Hawks	100
George F. Hoffman	100
O. F. Holmes	8,750
Frank Horton, Jr.	100
A. L. Houseworth	1,000
Iven Jeffries	20,900
Sara Kenner	500
George C. Keough	500
John Krusiewski	1,000
Nelson A. Larsen	500
Minnie B. or Fred Lehman	2,000
Peyton Lewis	100
C. B. Limbecker	500
H. J. Littlejohn	1,000
Wm. A. Luning	100
Lewis Sayre Mace	1,000
E. D. Meissner	1,000
L. Morris	2,000
Mart Morse	2,000
F. S. Myers	3,000
John H. Nebergall	100
W. H. O'Connor	500
H. B. Owens	100

Name	Shares	
Jules Petrequin	200	
A. S. Roberts	100	
A. C. Roscoe	14,500	
Thomas H. Roscoe	1,000	
Anthony J. Rossi	500	
Mrs. M. S. Saint-Amand	80	
John W. Sechrist	100	
		<hr/>
Total carried forward		94,180
		[27]
Brought forward		94,180

Name	Shares	
H. Preston Smith	2,500	
Edith C. Stockdale	100	
E. F. Tholen	1,000	
E. H. Van Velsor	24,250	
Mrs. A. C. Voss	100	
R. E. Weeden	500	
A. W. Werner	1,000	
Mrs. M. F. White	5,000	
Wm. Whitehead	100	
Flora E. Zutz	100	34,650
		<hr/>
Total.....		128,830

Stockholder W. Howard Gray, WHO HAS PAID HIS ASSESSMENT, has given his proxy to Wm. McKnight 100 shares

Stockholder Joseph F. McLaughlin, WHO HAS PAID HIS ASSESSMENT, has given his proxy to Wm. Forman, Jr., 10 shares

The above mentioned stockholders, having paid their assessment, are entitled to vote the number of shares set after their respective names. The proxies have been carefully checked by your committee and the persons whose names are above given as holding said proxies are entitled to vote the respective shares.

The following stockholders WHO HAVE NOT PAID THEIR ASSESSMENT AND WHO ARE NOT ENTITLED TO VOTE at this special stockholders meeting have given proxies to M. E. Gibson to vote their stock:

Name	Shares
H. E. Hudson	7,000
H. J. Engelbrecht	15,000
Herbert L. Davis	6,000
J. J. Davis	90,000
F. W. Baude	166,800

Total.....284,800

The following stockholders WHO HAVE NOT PAID THEIR ASSESSMENT AND WHO ARE NOT ENTITLED TO VOTE at this special stockholders meeting have given proxies to Mina H. Johnson to vote their stock:

Name	Shares
J. Moore	2,000
B. A. Thomas	3,000
C. F. Ford	22,500
A. G. Brodie	10,000
C. L. Rosenberg	1,000
D. Markovitz	1,000
Stella H. Ish	2,000
Mabel Ish Rosenthal	1,000
Sigmund Beel	6,000
Rowena Heald	5,000
L. S. Barton	1,000
F. B. Peterson	6,000
W. F. Haynie	12,500
R. S. Norris	3,000

Total.....76,000

[28]

The following stockholders WHO HAVE NOT PAID THEIR ASSESSMENT AND WHO ARE NOT ENTITLED TO VOTE at this special meeting of stockholders have given proxies to F. E. Horton to vote their stock:

Name	Shares
H. J. Amigo & Co.	1,000
M. H. Bishop	1,000
C. L. Cornberger	3,000
M. J. Downie	6,000
E. F. Dreger	500
A. O. Eppler	1,250
I. N. Faust, Jr.	10
E. Franklin	1,000
J. Crasser	100
D. J. Haggerty	11,800
L. F. Henderson	1,000
P. Kanne	100
M. C. Marshall	500
C. F. Painter	600
A. Pollexson	1,000
C. L. Richards	25,400
W. H. Simmons	2,000
S. E. Upright	300
Boyd L. Wilson	1,000

Total.....57,560

You will notice from the above that there are 550,890 shares represented in person or by proxy entitled under the by-laws of this corporation to vote at this meeting, being as follows:

M. E. Gibson, proxy	75,750 shares
Mina H. Johnson, proxy	9,250 shares
F. E. Horton, proxy	128,830 shares
Wm. McKnight, proxy	100 shares
Wm. Forman, Jr., proxy	10 shares
R. McCarthy	100 shares
F. E. Horton	336,100 shares
A. F. Price	500 shares

Total.....550,890 shares

Mrs. Mina Johnson, executrix of the estate of I. H. Johnson, deceased, is present in person, but the assessment on no part of said stock, standing in the name of I. H. Johnson has been paid and said stock is not entitled to vote at this meeting.

Dated, Reno, Nevada, this twenty-first day of March, 1932.

Wm. McKnight (signature)
 Wm. Forman, Jr., (signature)
 Committee on Proxies. [29]

Mr. A. F. Price, vice-president,
 Weepah Horton Gold Mines Company,
 Reno, Nevada.

Dear Sir:

I find the stock present in person and by proxy, hereinbefore certified by two of the members ap-

pointed by the Chair to examine and report on the number of shares represented in person or by proxy of even date herewith, is correct. I do not concur, however, in the conclusions stated by said two members of the committee, to-wit: Wm. Forman, Jr., and Wm. McKnight, as to the disqualification for voting purposes of the stock on which assessments have not been paid to date, and which, according to the notice recently sent to the stockholders, is to be sold on the eighteenth day of April, 1932, and state, in my opinion, that all stock present in person or by proxy today is entitled to vote at this meeting; the purported attempt to amend the by-laws of the corporation to disqualify from voting stock on which assessments have not been paid, being an invalid act which is null and void and beyond the powers of the directors to accomplish in the manner attempted, and ineffectual to accomplish that purpose.

Dated, at Reno, Nevada, this twenty-first day of March, 1932.

M. E. GIBSON,
One of said Committee. [30]

“EXHIBIT E.”

We, the undersigned, Inspectors of election to examine, canvass and report the votes cast at the special stockholders meeting of the Weepah Horton Gold Mines Company, a corporation, held in Reno, Nevada, on the twenty-first day of March, 1932, hereby report that, of the votes entitled to be counted at this election, the following persons received the following votes for directors of said corporation:

F. E. Horton	774,233	1/3 votes
Frank Horton, Jr.	774,233	1/3 votes
R. McCarthy	774,233	1/3 votes
Mina H. Johnson	142,083	1/3 votes
A. G. Brodie	142,083	1/3 votes
Sigmund Beel	142,083	1/3 votes

Respectfully submitted,

(signature)

WM. McKNIGHT,

(signature)

WM. FORMAN, JR.

[Endorsed]: Filed May 24, 1932. E. O. Patterson, Clerk. [31]

[Title of Court and Cause.]

MOTION TO DISMISS AMENDED BILL
OF COMPLAINT.

Comes now the defendants above named and move the Court to dismiss the above entitled suit upon the following grounds:

I.

It appears upon the face of the amended bill of complaint in the above entitled cause that this suit does not really and substantially involve a dispute or controversy within the jurisdiction of this Court, because the amount in controversy does not exceed the sum of Three Thousand Dollars (\$3,000.00), exclusive of interest.

II.

The jurisdictional averment of the amount involved is clearly frivolous, as the amended bill of complaint shows that the matter in controversy is title to corporate offices, and that the same is not reducible to a money valuation.

III.

That said amended bill of complaint fails to state facts sufficient to constitute a cause of action in favor of [32] the plaintiffs and against these defendants or either of them.

IV.

The amended bill of complaint does not state facts sufficient to constitute a valid cause of action in equity against these defendants or either of them.

V.

It appears on the face of said amended bill of complaint that said amended bill of complaint is wholly without equity.

VI.

The amended bill of complaint expressly shows that plaintiff, Mina H. Johnson, has no title to maintain this suit or to any relief against these defendants or either of them by reason of the facts herein alleged, in that it appears from said amended bill of complaint that any stock held by said Mina H. Johnson at the date of the corporate meeting therein mentioned was held by her as an executrix of the Estate of I. H. Johnson, deceased.

Wherefore, defendants pray that said amended bill of complaint be dismissed and that the said defendants be dismissed with their costs in this behalf incurred, and for such other and further relief as to the Court may seem just.

Dated this 31st day of May, 1932.

GEO. B. THATCHER,
WM. WOODBURN,
THATCHER & WOODBURN,
Attorneys for Defendants.

[Endorsed]: Filed June 1, 1932. E. O. Patterson,
Clerk. [33]

[Title of Court and Cause.]

HEARING ON MOTION TO DISMISS
AMENDED BILL OF COMPLAINT.

MINUTES OF COURT, June 27, 1932.

Plaintiffs' motion for leave to file supplemental bill of complaint and defendants' motion to dis-

miss the amended bill of complaint herein coming on for hearing this day by agreement of counsel, Maurice E. Gibson, Esq., appearing for and on behalf of the plaintiffs; Wm. Forman, Jr., Esq., of counsel, for the defendants. Upon the conclusion of argument by counsel for the respective parties, IT IS BY THE COURT ORDERED that plaintiffs' motion for leave to file supplemental bill of complaint joining Iven T. Jeffries, O. U. Pryce and P. N. Petersen as defendants be, and the same is hereby granted; and defendants' motion to dismiss the amended bill of complaint is hereby submitted on the oral argument and points and authorities herein heretofore filed and by the Court taken under advisement. [34]

[Title of Court and Cause.]

SUPPLEMENTAL BILL OF COMPLAINT.

To the Judge of the District Court of the United States for the District of Nevada:

Mina H. Johnson, Sigmund Beel and A. G. Brodie, plaintiffs herein, each of whom is a citizen of the State of California, said Mina H. Johnson and said Sigmund Beel residing in the City and County of San Francisco, in said State of California, and said A. G. Brodie residing in the County of Alameda, State of California, pursuant to leave of Court first had and obtained, file this their supplemental bill of complaint against F. E. Horton,

Frank Horton, Jr., R. McCarthy, A. F. Price, Iven T. Jeffries, O. U. Pryce and P. N. Pedersen, defendants, who are citizens of the State of [35] Nevada, each of whom resides in the County of Washoe, in said state and defendant Weepah Horton Gold Mines Company, a corporation, duly created and existing under the laws of the State of Nevada, and being a citizen of said state, having its principal place of business at Tonopah, in the County of Nye, in said state, and complain and say:

1. The defendant Iven T. Jeffries is a citizen of the State of Nevada and resides in the County of Washoe in said state.

2. The defendant O. U. Pryce is a citizen of the State of Nevada and resides in the County of Washoe in said state.

3. The defendant P. N. Pedersen is a citizen of the State of Nevada and resides in the County of Washoe in said state.

4. At the organization meeting of the board of directors held on the 21st day of March, 1932, referred to in paragraph 19 of plaintiffs' amended bill of complaint, a resolution was adopted establishing the principal office of the corporation, outside of the State of Nevada, at Room 1215 Crocker First National Bank Building, San Francisco, California, and providing that all meetings of the directors and stockholders of said corporation were to be held thereafter at said office; at said meeting a

resolution was also adopted declaring that the office of assistant secretary, at that time filled by defendant Iven T. Jeffries, was thereafter to be considered vacant and removing, as of said date, said defendant Iven T. Jeffries from said office.

5. On the 29th day of March, 1932, plaintiffs herein filed their original bill of complaint in this cause and [36] in said court against F. E. Horton, Frank Horton, Jr., R. McCarthy, and Weepah Horton Gold Mines Company, a corporation, defendants above named, for an injunction restraining said defendants F. E. Horton, Frank Horton, Jr., and R. McCarthy from exercising or purporting to exercise the rights and functions of officers in defendant corporation and for the decree of the court declaring that said plaintiffs had been duly elected directors and officers of said corporation as therein set forth.

6. On the 24th day of May, 1932, pursuant to leave of said court first had and obtained said plaintiffs filed an amended bill of complaint in said cause substantially in the same form and praying for the same relief as set forth in said original bill of complaint and adding the name of A. F. Price as a defendant in said action.

7. On the 16th day of April, 1932, at the hour of 10:00 o'clock A. M. of said day, a meeting of plaintiffs herein, as the directors of said defendant corporation, was held at said room 1215 Crocker First National Bank Building, in the City and

County of San Francisco, State of California, pursuant to written notice of said meeting duly served upon Mina H. Johnson and Sigmund Beel, plaintiffs herein and F. E. Horton, Frank Horton, Jr., and R. McCarthy, defendants herein more than two days prior to said 16th day of April, 1932, by A. G. Brodie as secretary of said corporation.

8. At said meeting of said directors held pursuant to said notice on the 16th day of April, 1932, in San Francisco, California, at which there were present plaintiffs Mina H. Johnson, Sigmund Beel and A. G. Brodie acting as directors of said corporation and no other party hereto being present, a [37] resolution was adopted by the affirmative vote of all of said three individuals, acting as directors of said corporation, extending, for a period of ninety (90) days from and after April 18th, 1932, the sale of any stock of said corporation on which said assessment No. 1, levied on the 22nd day of May, 1929, had not been paid.

9. Notice of said postponement of the sale date of said delinquent stock under said assessment was duly served upon all of the defendants herein prior to 10:00 o'clock A. M. on said 18th day of April, 1932; notwithstanding said notification of said postponement of said sale date defendants F. E. Horton and Iven T. Jeffries, proceeded in the name of the corporation on said 18th day of April, 1932, at the hour of 10:02 o'clock A. M. of said day, with the purported sale of alleged delinquent stock on which

said assessment had not been paid on the 18th day of April, 1932.

10. Said defendants F. E. Horton and Iven T. Jeffries purported at said time to make the following sales of delinquent stock:

Sold to defendant O. U. Pryce for the amount of assessment and costs:

Name	Cert. No.	Shares	Assmt.	Costs.
Amigo, H. J.	294	1000	10.00	1.00
Barton, L. S.	195	1000	10.00	1.00
	—	—	—	—
		2000	20.00	2.00

Sold to defendant P. N. Pedersen for the amount of assessment and costs:

Name	Cert. No.	Shares	Assmt.	Costs.
Baude, F. W.	257-271 incl.	166,800	1668.00	15.00
Beel, Sigmund	169-170 incl.	6,000	60.00	2.00
Brodie, A. G.	141-147 incl.	10,000	100.00	7.00
Ford, C. F.	164-168 incl.	22,500	225.00	5.00
Haynie, W. F.	178-180 incl.	12,500	125.00	3.00
Johnson, I. H.	272-287 incl.	167,000	1670.00	16.00
Norris, R. S.	128-130 incl.	3,000	30.00	3.00
Peterson, F. B.	171-173 “	6,000	60.00	3.00
		—	—	—
		393,000	\$3938.00	54.00

[38]

Sold to defendant Weepah Horton Gold Mines Company for the amount of assesment and costs:

Name	Cert. No.	Shares	Assmt.	Costs.
Archibald, E. J.	107	100	1.00	1.00
Chung, M.	191	500	5.00	1.00
Codd, A. A.	98	1000	10.00	1.00
Downie, M. J.	344-346 incl.	6000	60.00	3.00
Dreger, E. F.	209	500	5.00	1.00
Egan, S.	134	100	1.00	1.00
Appler, A. O.	211	1250	12.50	1.00
Faust, Jr. I. N.	117	10	.10	1.00
Gallagher, C. F.	135	1000	10.00	1.00
Grasser, J.	330	100	1.00	1.00
Henderson, L. F.	342	1000	10.00	1.00
Hudson, M. J.	39	200	2.00	1.00
Ish, R. S.	189	2000	20.00	1.00
Ish, G. H.	188	2000	20.00	1.00
Jensen, P.	36	100	1.00	1.00
Kanne, P.	115	100	1.00	1.00
Markovits, D.	149	1000	10.00	1.00
McQuire, S. A.	204	100	1.00	1.00
Meyer, H. F.	297	300	3.00	1.00
Moore, J.	182	2000	20.00	1.00
Partner, L.	352	100	1.00	1.00
Paslouski, J.	123	100	1.00	1.00
Pollexren, A.	232	1000	10.00	1.00
Reiss, A.	131	1000	10.00	1.00
Rosenberg, C. L.	148	1000	10.00	1.00
Rosenthal, M.	190	1000	10.00	1.00
Scarrow, C. H.	208	100	1.00	1.00
Steil, William	133	200	2.00	1.00
Strieve, Rev. H.	301	200	2.00	1.00
Thomas, B. A.	187	3000	30.00	1.00

Name	Cert. No.	Shares	Assmt.	Costs.
Upright, S. E.	18	300	3.00	1.00
Weitzman, J.	322-338 incl.	1250	12.50	7.00
Wilson, B. L.	196	1000	10.00	1.00
Davis, J. J.	70-86 “	90,000	900.00	17.00
Davis, H. L.	52 & 54	6,000	60.00	2.00
Engelbrecht, H. J.	57 & 339	15,000	150.00	2.00
Hudson, H. H.	58 & 340	7,000	70.00	2.00
			<hr/>	<hr/>
		147,610	\$1,476.00	\$66.00
		<hr/>	<hr/>	<hr/>
Grand Total.....		543,410	\$5,434.10	\$120.00
		<hr/>	<hr/>	<hr/>

11. Defendants O. U. Pryce, P. N. Pedersen, and Weepah Horton Gold Mines Company, purported to purchase said stock in connection with said purported delinquent sale, as aforesaid, with full and complete knowledge at the time of such [39] purported purchases of the action of plaintiffs herein in postponing said sale date, as aforesaid, and that notice of said continuance of said sale date had been communicated prior to said sale date and hour to defendants F. E. Horton and Iven T. Jeffries.

12. At the time of the filing of the amended bill of complaint herein plaintiffs had no knowledge of the purported sale for delinquent assessments of the stock referred to in paragraph 10 hereof, which they now allege and plead as authorized by Equity Rule 34.

Wherefore, plaintiffs pray for the decree of this Court removing the cloud on the title to said stock resulting from the purported sale for delinquent assessments, as aforesaid, and declaring the invalidity of said purported sales of stock and that said purchasers thereat obtained no right, title, or interest, in and to the stock purported to have been severally bought by them as a result of said sale, as aforesaid, in addition to the relief prayed for in the amended bill of complaint herein.

Dated, June 20th, 1932.

M. E. GIBSON,
Solicitor for Plaintiffs,
No. 1 Montgomery Street,
San Francisco, California. [40]

United States of America,
State of California,
City and County of San Francisco.—ss.

Mina H. Johnson, being duly sworn, deposes and says:

That she is one of the plaintiffs in the above entitled action; that she has read said supplemental bill of complaint and knows the contents thereof; that said supplemental bill of complaint is true of her own knowledge, except as to the matters therein alleged on information and belief and as to those matters she believes it to be true. That she makes this verification on behalf of her co-plaintiffs as well as for herself.

MINA H. JOHNSON.

Subscribed and sworn to before me this 20th day of June, 1932.

[Seal]

LEONTINE E. DENSON,
Notary Public in and for the City and County
of San Francisco, State of California.

My commission expires December 3, 1935.

[Endorsed]: Filed June 27, 1932. E. O. Patter-
son, Clerk. [41]

DECISION OF COURT ON MOTION TO
DISMISS AMENDED BILL OF COMPLAINT.

MINUTES OF COURT, JULY 2, 1932.

MINA H. JOHNSON, SIGMUND BEEL and A.
G. BRODIE,

Plaintiffs,

vs.

F. E. HORTON, FRANK HORTON, JR., R. Mc-
CARTHY, A. F. PRICE, WEEPAH-HOR-
TON GOLD MINES COMPANY, a corpora-
tion, organized and existing under the laws of
the State of Nevada, IVEN T. JEFFRIES,
O. U. PRYCE and P. N. PEDERSEN,

Defendants.

Defendants' motion to dismiss plaintiffs' amended bill of complaint herein having heretofore been argued, submitted and taken under advisement, IT IS NOW BY THE COURT ORDERED that the said motion to dismiss the amended bill of complaint

be, and the same is hereby granted; and the amended bill of complaint and supplemental bill of complaint are hereby dismissed. The Court reserves the right to file written opinion herein later.
[42]

[Title of Court and Cause.]

PETITION FOR APPEAL.

To the Hon. Frank H. Norcross, Judge of the District Court of the United States for the District of Nevada:

Mina H. Johnson, Sigmund Beel, and A. G. Brodie, your petitioners who are the plaintiffs in the above-entitled cause, conceiving themselves, and each of them, aggrieved by the order made and entered on the 2nd day of July, 1932, in the above-entitled cause, granting defendants' motion for the dismissal of the amended bill of complaint and the supplemental bill of complaint in the above-entitled cause and dismissing the amended bill of complaint and supplemental bill of complaint in the above-entitled cause, do hereby appeal from said order to the United States Circuit Court of Appeals for the Ninth Circuit, for the reasons specified in the assignment of errors which is filed herewith, and they pray that this appeal be allowed and that a transcript of the record, proceedings, and papers upon which said order was made, duly authentic-
[43] cated, be sent to the United States Circuit Court of Appeals for the Ninth Circuit.

The aforesaid petitioners, and each of them, pray that this appeal may be allowed on the giving of a cost bond in an amount to be fixed by this Court and petitioners pray for all general and equitable relief.

Dated, July 28th, 1932.

MAURICE E. GIBSON,
Solicitor for Plaintiffs.

[Endorsed]: Filed July 30th, 1932. E. O. Patterson, Clerk. [44]

[Title of Court and Cause.]

ASSIGNMENT OF ERRORS.

Now come the plaintiffs above named and say that in the record and proceedings of the said Court in the above-entitled cause and in the order made and entered therein on the 2nd day of July, 1932, there is manifest error and for error the said plaintiffs assign the following:

(1) The Court erred in sustaining the motion of defendants to dismiss the amended bill of complaint and the supplemental bill of complaint.

(2) The Court erred in dismissing the amended bill of complaint and in dismissing the supplemental bill of complaint.

Wherefore plaintiffs pray that said order may be reversed and for such other and further relief as to the Court may seem just and proper.

Dated, July 28th, 1932.

MAURICE E. GIBSON,
Solicitor for Plaintiffs.

[Endorsed]: Filed July 30th, 1932. E. O. Pat-
terson, Clerk. [45]

[Title of Court and Cause.]

ORDER ALLOWING APPEAL.

Upon motion of solicitor for plaintiffs, it is ordered as follows:

1. That the appeal presented by plaintiffs here-
in be, and the same hereby is, allowed and that a
certified transcript of the record and proceedings
be transmitted to the United States Circuit Court
of Appeals for the Ninth Circuit in accordance
with the rules of practice.

2. It is further ordered that bond for costs to
be given by plaintiffs and complainants on said
appeal be and the same is hereby fixed in the sum
of \$300.00 conditioned as provided by law.

3. It is further ordered that a citation be issued
admonishing defendants to be and appear in the
United [46] States Circuit Court of Appeals for
the Ninth Circuit on or before September 1st, 1932.

Dated, August 1st, 1932.

FRANK H. NORCROSS,
United States District Judge.

[Endorsed]: Filed August 1, 1932. E. O. Pat-
terson, Clerk. [47]

[Title of Court and Cause.]

COST BOND ON APPEAL.

KNOW ALL MEN BY THESE PRESENTS: That the PACIFIC INDEMNITY COMPANY, as surety, are held and firmly bound unto the above named defendants, F. E. Horton et al., in the full and just sum of Three Hundred and no/100 Dollars (\$300.00), to be paid to the said F. E. Horton, et al., to which payment, well and truly to be made, we bind ourselves, our successors and assigns, jointly and severally, by these presents.

SEALED with our seals and dated this 4th day of August, 1932.

WHEREAS, the District Court of the United States in and for the District of Nevada in a suit pending in said court between the above plaintiffs, Mina H. Johnson, et al., v. F. E. Horton, et al., defendants, by order made and entered on the 2nd day of July, 1932, granted defendants' motion for dismissal of the amended bill of complaint and the supplemental bill of complaint in the above entitled cause and dismissed the amended bill of complaint and supplemental bill of complaint in the above entitled cause, and the said plaintiffs have obtained from said court its order allowing an appeal from said order to the United States District Court of Appeals for the Ninth Circuit, and a citation directed to the said defendants citing and admonishing defendants to be and appear in the United

States Court of Appeals for the Ninth Circuit on or before September 1, 1932.

NOW, THEREFORE, the condition of the above obligation is such that if the said plaintiff shall prosecute this appeal to effect and answer and pay all costs if plaintiffs fail to make said appeal good, then the above obligation to be void; else to remain in full force and effect.

[Seal] PACIFIC INDEMNITY COMPANY,
 My EARL A. DAVIS,
 Attorney-in-Fact.

Countersigned by
 E. F. LUNSFORD,
 Attorney in fact for Nevada.

Approved Aug. 6th, 1932.

[Seal] FRANK H. NORCROSS,
 District Judge.

[Endorsed]: Filed Aug. 6, 1932. E. O. Patterson,
 Clerk. [48]

[Title of Court and Cause.]

PRAECIPE FOR TRANSCRIPT OF RECORD.

To the Clerk of the United States District Court
 in and for the District of Nevada:

Sir:

You will please prepare a transcript of the record to be transmitted to the Circuit Court of Appeals for the Ninth Circuit in pursuance to the

appeal heretofore taken in this case, and include therein the following:

1. Plaintiffs' amended bill of complaint.
2. Defendants' motion to dismiss amended bill of complaint.
3. Order of Court allowing plaintiff to file supplemental bill of complaint and permitting the joining of Iven T. Jeffries, O. U. Pryce, and P. N. Pedersen as defendants in said case and providing that defendants' motion to dismiss amended bill of com- [49] plaint shall be considered as applying to said supplemental bill of complaint and the defendants therein as well as said amended bill of complaint, which order was made in open court on the 27th day of June, 1932.
4. Plaintiffs' supplemental bill of complaint.
5. Order of Court under date of July 2nd, 1932, granting defendants' motion to dismiss amended bill of complaint and supplemental bill of complaint and dismissing the amended bill of complaint and supplemental bill of complaint.
6. Plaintiffs' petition for appeal.
7. Plaintiffs' assignment of errors.
8. Order of Court allowing appeal.
9. Citation on appeal.

MAURICE E. GIBSON,
Counsel for Plaintiffs-Appellants.

[Endorsed]: Filed August 5, 1932. E. O. Patterson, Clerk. [50]

[Title of Court and Cause.]

AFFIDAVIT OF SERVICE BY MAIL.

United States of America,
State of California,
City and County of San Francisco.—ss.

E. L. Shadle, being first duly sworn, deposes and says:

That she is secretary to M. E. Gibson, attorney for plaintiffs and appellants in the above entitled action with offices at No. 1 Montgomery Street, San Francisco, California; and that Messrs. Thatcher & Woodburn, attorneys for defendants and appellees above named, have offices in Reno, Nevada; that there is a regular service and communication by United States mail between said two cities of San Francisco, California, and Reno, Nevada; that on the 4th day of August, 1932, affiant served the petition for appeal, assignment of errors, and praecipe for transcript of record on Messrs. Thatcher & Woodburn, by placing in the United States mail, postage prepaid, a true and correct copy of said papers, enclosed in a sealed envelope, addressed to Messrs. Thatcher & Woodburn, Reno, Nevada.

E. L. SHADLE.

Subscribed and sworn to before me this 4th day of August, 1932.

[Seal]

LEONLINE E. DENSON,
Notary Public in and for the City and County
of San Francisco, State of California.

My commission expires December 3, 1935.

[Endorsed]: Filed August 5, 1932. E. O. Patterson, Clerk. [51]

[Title of Court and Cause.]

SUPPLEMENT TO PRAECIPE FOR
TRANSCRIPT OF RECORD.

To the Clerk of the United States District Court
in and for the District of Nevada:

Sir:

In addition to the documents requested by me in the praecipe for transcript of record to be included in said record, you will add thereto a copy of the \$300.00 bond for costs on appeal as provided in the order allowing the appeal.

MAURICE E. GIBSON,
Counsel for Plaintiffs-Appellants.

[Endorsed]: Filed Aug. 15, 1932. E. O. Patterson, Clerk. [52]

[Title of Court and Cause.]

CITATION ON APPEAL.

United States of America.—ss.

To F. E. Horton, Frank Horton, Jr., R. McCarthy,
A. F. Price, Weepah Horton Gold Mines Com-
pany, a corporation, Iven T. Jeffries, O. U.
Pryce, and P. N. Petersen:

GREETING:

You and each of you are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the Ninth Circuit at the City of San Francisco, State of California, within thirty (30) days from the date hereof, pursuant to an order allowing an appeal from the District Court of the United States in and for the District of Nevada, in a suit wherein Mina H. Johnson, Sigmund Beel, and A. G. Brodie, are appellants and you are appellees, to show cause, if any there be, why the order rendered against said appellants should [53] not be corrected, and why speedy justice should not be done to the parties on that behalf.

Given under my hand at San Francisco, in the Northern District of California, this 1st day of August, 1932.

[Seal] FRANK H. NORCROSS,
Judge of the District Court for the District of
Nevada.

Service of a copy of the foregoing citation is acknowledged this 6th day of August, 1932.

THATCHER & WOODBURN,
Solicitors for Defendants.

[Endorsed]: Filed Aug. 19th, 1932. E. O. Patterson, Clerk. [54]

[Title of Court and Cause.]

CERTIFICATE OF CLERK, U. S. DISTRICT
COURT, TO TRANSCRIPT OF RECORD.

United States of America,
District of Nevada.—ss.

I, E. O. Patterson, Clerk of the District Court of the United States for the District of Nevada, do hereby certify that I am custodian of the records, papers and files of the said United States District Court for the District of Nevada, including the records, papers and files in the case above entitled.

I further certify that the attached transcript, consisting of 56 typewritten pages numbered from 1 to 56 inclusive, contains a full, true and correct transcript of the proceedings in said case and of all papers filed therein, together with the endorsements of filing thereon, as set forth in the praecipe filed in said case and made a part of the transcript attached hereto, as the same appears from the originals of record and on file in my office as such clerk in the City of Carson, State and District aforesaid.

I further certify that the cost for preparing and certifying to said record, amounting to \$9.80, has been paid to me by Maurice E. Gibson, Esq., attorney for the plaintiffs and appellants in the [55] above-entitled cause.

And I further certify that the original citation, issued in said cause, is hereto attached.

WITNESS my hand and the seal of said United States District Court this 22nd day of August, A. D. 1932.

[Seal] E. O. PATTERSON,
E. O. Patterson, Clerk U. S. District Court for the
District of Nevada. [56]

[Endorsed]: No. 6946. United States Circuit Court of Appeals for the Ninth Circuit. Mina H. Johnson, Sigmund Beel and A. G. Brodie, Appellants, v. F. E. Horton, Frank Horton, Jr., R. McCarthy, A. F. Price, Weepah Horton Gold Mines Company, a corporation, Iven T. Jeffries, O. U. Pryce and P. N. Petersen, Appellees. Transcript of Record. Upon Appeal from the United States District Court for the District of Nevada.

Filed August 23, 1932.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.